

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of
Telecommunications Relay Services
And Speech-to-Speech Services for
Individuals with Hearing and Speech
Disabilities
CC Docket No. 98-67
CG Docket No. 03-123

DECLARATORY RULING

Adopted: January 24, 2005

Released: January 26, 2005

By the Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling, we address a Petition for Declaratory Ruling (Petition) filed by Petitioner Hands On Video Relay Services, Inc. ("Petitioner" or "Hands On") on December 29, 2004. Petitioner requests a declaratory ruling that its "Brown Bag Rewards Program," offered in connection with its provision of Video Relay Service (VRS), a form of telecommunications relay service (TRS), does not violate any section of the Communications Act or any Commission rule. Hands On refers to its program as a "customer loyalty program," which permits consumers of its VRS service to earn points that can be redeemed by having Hands On pay their DSL or cable modem bill. For the reasons set forth below, we conclude that any program that involves the use of any type of financial incentives to encourage or reward a consumer for placing a TRS call, including the Brown Bag Rewards Program, is

1 Petition for Declaratory Ruling, CC Docket No. 98-67, CG Docket No. 03-123, filed December 29, 2004 (directed to the Chief, Consumer and Governmental Affairs Bureau).

2 Video relay service (VRS) is a telecommunications relay service that allows individuals with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller. 47 C.F.R. § 64.601(17).

3 TRS, mandated by Title IV of the Americans with Disabilities Act (ADA) of 1990, enables an individual with a hearing or speech disability to communicate by telephone with a person without such a disability. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) who relay conversations between persons using various types of assistive communication devices and persons using a standard telephone. There are presently several forms of TRS, including traditional or text (TTY) based TRS, Speech-to-Speech (STS), IP Relay, and Video Relay Service (VRS). See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, FCC 04-137, 19 FCC Rcd 12475 at ¶¶ 3-13 (June 30, 2004) (2004 TRS Report & Order) (summarizing TRS and recent TRS orders).

4 E.g., Hands On Petition at 2.

5 Id. As a general matter, a consumer must have a high speed Internet connection to use VRS.

inconsistent with Section 225 of the Communications Act of 1934 and the TRS regulations.<sup>6</sup> As a result, we will instruct the Interstate TRS Fund administrator, presently the National Exchange Carrier Association (NECA), that, effective March 1, 2005, any TRS provider offering such incentives or rewards for the use of any of the forms of TRS will be ineligible for compensation from the Interstate TRS Fund (Fund).

## II. BACKGROUND

2. As Hands On explains, its Brown Bag Rewards Program is a customer loyalty program that “offers Hands On’s [VRS] customers the opportunity to have their DSL or cable modem bill reimbursed by Hands On.”<sup>7</sup> Under the program, “[c]ustomers receive five points for every minute of video relay calls placed through Hands On,” and the customers “may redeem points by sending in their DSL or cable bills to Hands On.”<sup>8</sup> Hands On then “reimburses those customers five cents per point up to the amount of the DSL or cable modem bill”; “no other cash payments are made” and the “program is strictly limited to reimbursement for access costs to high speed Internet service.”<sup>9</sup> Hands On asserts that its program is intended to “eliminate an existing barrier that is discriminatory to deaf, hard of hearing and speech disabled persons who need higher bandwidth to communicate in their natural visual language, American Sign Language.”<sup>10</sup> Finally, Hands On notes that “[n]o one is forced to use the Brown Bag Program,” there is no “minimum usage” requirement, and the points accumulate until they are used.<sup>11</sup> Therefore, Hands On believes, the program is not an incentive to use VRS merely to obtain a reward.<sup>12</sup>

3. Hands On’s central argument is that this program is permissible because there is nothing in Section 225, the Commission’s TRS rules, or any other provisions of the Communications Act that prohibit such a program.<sup>13</sup> Hands On further asserts that it is in the public interest to offer this program because persons with hearing or speech disabilities using VRS bear DSL or cable modem subscription costs that are greater than the costs for conventional telephone service used by hearing persons.<sup>14</sup> In addition, Hands On asserts that its program is not the same as supplying equipment to customers conditioned on the use of a minimum number of TRS minutes, which it suggests would be improper.<sup>15</sup> Finally, Hands On notes that there have “apparently been no consumer complaints concerning the Brown Bag program,” and that the Commission should not be protecting other providers from competition.<sup>16</sup>

## III. DISCUSSION

4. We conclude that the Brown Bag Rewards Program, and any program that offers any kind of financial incentive or reward for a consumer to place a TRS call, including minimum usage

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<sup>6</sup> See 47 U.S.C. § 225; 47 C.F.R. § 64.601 *et seq.* (implementing regulations).

<sup>7</sup> Hands On *Petition* at 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* Hands On also states that the program does not encourage fraudulent VRS calls, and that it is unaware of any VRS calls that were made solely to generate Brown Bag points. *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See *Id.* at 2.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

arrangements or programs (whether or not tied to the acceptance of equipment), violates Section 225 of the Communications Act.

5. First, we do not believe that Hands On accurately describes the nature and effect of its rewards program in view of the intent of Congress in enacting the TRS program and the TRS cost recovery regime. Section 225 requires common carriers offering telephone voice transmission services to also provide TRS throughout the area in which they offer telephone transmission service to ensure that persons with hearing and speech disabilities have access to the telephone system. As we have explained, the provision of TRS is an accommodation for persons with certain disabilities – Congress, in enacting Title IV of the ADA, “place[d] the obligation on carriers providing voice telephone services to *also* offer TRS to, in effect, remedy the discriminatory effects of a telephone system inaccessible to persons with disabilities.”<sup>17</sup> In other words, the provision of TRS is “an accommodation that is required of telecommunications providers, just as other accommodations for persons with disabilities are required by the ADA of businesses and local and state governments.”<sup>18</sup> To this end, Section 225 is intended to ensure that individuals with hearing or speech disabilities have access to telephone services that are “functionally equivalent” to those available to individuals without such disabilities.<sup>19</sup>

6. Because the provision of TRS is an accommodation for persons with certain disabilities, the cost of the TRS service is not paid by the TRS user.<sup>20</sup> The statute and regulations provide that eligible TRS providers offering interstate services and certain intrastate services will be compensated for their just and “reasonable” costs of doing so from the Interstate TRS Fund, currently administered by NECA.<sup>21</sup> “Congress chose to adopt a mechanism for compensation of TRS providers that allows them to be paid by all subscribers for interstate services” through contributions paid into the Fund.<sup>22</sup> Under this mechanism, TRS providers that provide TRS services that are eligible for compensation from the Interstate TRS Fund submit to NECA on a monthly basis the number of minutes of service they provided of the various forms of TRS, and NECA compensates them based on per-minute compensation rates calculated on an annual basis.<sup>23</sup> In addition, VRS consumers presently do not pay any long distance charges in connection with a VRS call.<sup>24</sup> Therefore, there is no cost of any kind to the consumer for placing a VRS call.

7. In this light, we do not believe that it is accurate to compare, as Hands On does, its Brown Bag Rewards Program, or any other TRS incentive or rewards program, to reward programs offered by airlines or telephone long distance companies.<sup>25</sup> Nor do we believe that it is correct to say that there is no incentive to make VRS calls merely to acquire a reward.<sup>26</sup> With airline tickets and long distance calls, for example, the consumer who buys the ticket or makes the call *has to pay for* the ticket or

<sup>17</sup> See, e.g., *2004 TRS Report & Order* at ¶¶ 179, 182 n.521.

<sup>18</sup> *Id.* at ¶ 182 n.521.

<sup>19</sup> See, e.g., 47 U.S.C. § 225(a)(3).

<sup>20</sup> See, e.g., *2004 TRS Report & Order* at ¶ 4 n.23.

<sup>21</sup> See, e.g., 47 C.F.R. § 64.604(c)(5)(iii)(E).

<sup>22</sup> See *2004 TRS Report & Order* at ¶ 182 n.521.

<sup>23</sup> See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 04-1999, 19 FCC Rcd 12224 (June 30, 2004) (order setting initial 2004-2005 TRS compensation rates and describing process).

<sup>24</sup> See *2004 TRS Report & Order* at ¶¶ 127-129 & n.364 (VRS providers cannot bill the user for any long distance charges if they do not offer carrier of choice; conversely, waiver of the carrier of choice requirement is conditioned on providers offering free long distance calls to consumers).

<sup>25</sup> See *Hands On Petition* at 1-2.

<sup>26</sup> *Id.* at 3.

the call; therefore, any financial “reward” for doing so is really a discount or a refund on monies the consumer is obligated to pay because the consumer elected to use that particular service. By contrast, with TRS, the consumer does not pay for the cost of the TRS call and has no involvement with the provider billing and receiving payment from NECA; the TRS provider bills NECA directly for the call based on the length of the call. Therefore, the TRS consumer does not have to pay anything to obtain a financial reward; the consumer merely needs to use a service (*i.e.*, place a call) that someone else will pay for, and the more calls that are made, the greater the financial reward (again, at no cost to the consumer). In this circumstance, any financial reward that inures to the consumer because the consumer placed a TRS call is in fact an incentive for the consumer to place TRS calls, including calls the consumer might not otherwise make but for the opportunity to earn a reward. As a practical matter, the TRS provider is enticing the consumer to make TRS calls that will artificially raise costs to the Interstate TRS Fund, and the provider is doing so by in effect “paying” the consumer to make more calls.<sup>27</sup>

8. The fact that any TRS reward or incentive program has the effect of enticing TRS consumers to make TRS calls that they would not otherwise make, which allows the provider to receive additional payments from the Fund, and results in “payments” to consumers for using the service, puts such programs in violation of Section 225. More particularly, such marketing practices – *e.g.*, usage-based reward or incentive programs, or programs that tie the receipt of equipment to minimum usage requirements – violate the functional equivalency requirement.<sup>28</sup> As we have noted, the purpose of TRS is to allow persons with certain disabilities to use the telephone system. Therefore, the obligation placed on TRS providers is to be available to handle calls consumers choose to make, when they choose to make them. As we have frequently noted, for example, when a TRS user places an outbound call and reaches a CA, that is the equivalent to receiving a “dial tone.”<sup>29</sup> It follows that TRS providers cannot be encouraging TRS calls with financial incentives or rewards. Because the Fund, and not the consumer, pays for the cost of the TRS call, such financial incentives are tantamount to enticing consumers to make calls that they might not ordinarily make. In addition, in these circumstances TRS is no longer simply an accommodation for persons with certain disabilities, but an opportunity for their financial gain. In other words, offering financial incentives or rewards to TRS users also violates the functional equivalency mandate because it gives TRS consumers more than free access to TRS, and therefore to the telephone system; it gives them an additional financial reward for using a service that is provided as an accommodation under the ADA.<sup>30</sup>

9. In sum, in view of the intent and nature of Section 225, and the obligation placed on entities providing voice telephone services to also offer TRS as an accommodation to persons who, because of a disability, cannot meaningfully use the voice telephone system, we interpret Section 225 and the implementing regulations to prohibit a TRS provider’s use of any kind of financial incentives or rewards, including arrangements tying the receipt of equipment to minimum TRS usage, directed at a consumer’s use of their TRS service. As a result, we will instruct the Interstate TRS Fund administrator

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<sup>27</sup> See generally *2004 TRS Report & Order* at ¶ 97 (noting our duty to “safeguard the integrity of the fund”).

<sup>28</sup> See 47 U.S.C. § 225(a)(3) & (c).

<sup>29</sup> See, *e.g.*, *2004 TRS Report & Order* at ¶ 3 n.18.

<sup>30</sup> Hands On’s assertions that no one is forced to use its program, that it is in the public interest to offer reward programs because of the cost of high speed internet service, and that there have been no complaints about its program are beside the point. The mere fact that a financial incentive or reward program is offered has the effect of enticing consumers to make calls they would not otherwise make, regardless of whether participation in the program is mandatory. Further, as we frequently note, Title IV of the ADA requires that certain entities offer TRS as an accommodation for persons with certain disabilities; it does not address associated issues such as the cost of bringing high speed Internet service to the home (or elsewhere) or the cost of the equipment necessary to make the various types of TRS calls. Finally, it is not surprising that no consumer may have complained about Hands On’s program, since it obviously would not be in any consumer’s financial interest to do so.

(NECA) that, effective March 1, 2005, any TRS provider offering such incentives for the use of any of the forms of TRS will be ineligible for compensation from the Interstate TRS Fund.<sup>31</sup>

10. *Paperwork Reduction Act.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

11. *Congressional Review Act.* The Commission will not send a copy of the *Declaratory Ruling* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the adopted rules are rules of particular applicability.

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 225 of the Communications Act, of 1934, as amended, 47 U.S.C. § 225, and sections 0.141, 0.361, and 1.3 of the Commission Rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, this *Declaratory Ruling* is hereby ADOPTED.

13. IT IS FURTHER ORDERED that Hands On’s Petition for Declaratory Ruling IS DENIED.

14. IT IS FURTHER ORDERED that any TRS provider offering any kind of financial incentives or rewards, including arrangements tying the receipt of equipment to minimum TRS usage, SHALL, effective March 1, 2005, be ineligible for compensation from the Interstate TRS Fund.

15. To request materials in accessible formats (such as braille, large print, electronic files, or audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Declaratory Ruling* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>.

FEDERAL COMMUNICATIONS COMMISSION

K. Dane Snowden, Chief  
Consumer & Governmental Affairs Bureau

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<sup>31</sup> Nothing in this *Declaratory Ruling* is intended to affect the obligation of TRS providers to engage in outreach efforts, consistent with this *Declaratory Ruling*, to ensure that the public is aware of the availability and use of all forms of TRS. *See, e.g.*, 47 C.F.R. § 64.604(c)(3).